

F8SPRIZC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 RINALDO RIZZO,

4 Plaintiff,

5 v.

13 CV 8664 (AKH)

6 DF LAND, LLC, ET AL.,

7 Defendants.

8 -----x  
9 New York, N.Y.  
August 28, 2015  
10:38 a.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

12 District Judge

13 APPEARANCES

14 PHILLIPS & ASSOCIATES  
15 Attorneys for Plaintiff  
16 BY: JESSE ROSE, ESQ.

17 DAVIS, WRIGHT, TREMAINE, LLP  
18 Attorneys for Defendants  
19 BY: ROY P. SALINS, ESQ.  
20 SCOTT COOPER, ESQ.  
21  
22  
23  
24  
25

F8SPRIZC

(In open court)

(Case called)

THE COURT: At a regularly scheduled status conference, the parties, through their counsel, advised me that the case had settled. The amount is to remain confidential, but has been told to me. The balance will be on the public docket.

So this is a case where plaintiff sued because of disabilities and because of underpayment of overtime under the Fair Labor Standards Act and New York State Labor Law. The Court has jurisdiction of the parties.

The plaintiff alleges that the defendants are jointly liable for violations of both of the laws, that is, under the Disabilities Act and under the New York and Federal Labor Standards Act.

Why, Mr. Rose, do you believe that the settlement is fair and adequate?

MR. ROSE: There are a number of disputed facts involved in this, including several exemptions asserted by the defendants for which there are questions of fact.

Ultimately --

THE COURT: What percentage of the economic damages does the settlement constitute, approximately?

MR. ROSE: Including his lost wages, it's approximately 50 percent, if you don't include punitive or

F8SPRIZC

1 liquidated damages. Of his entire lost -- after attorneys'  
2 fees and costs that he'll actually receive.

3 THE COURT: Mr. Salins, in your judgment, what  
4 proportion of the maximum recovery, economic recovery, does the  
5 settlement constitute?

6 MR. SALINS: Oh, I agree with Mr. Rose. I think that  
7 the settlement --

8 THE COURT: It's about 50 percent, sir?

9 MR. SALINS: Yes.

10 THE COURT: So tell me about the exemptions. Why are  
11 the exceptions particularly potent, in your opinion? This is  
12 Mr. Rose, speaking.

13 MR. ROSE: There are two exemptions at play. One, I  
14 think the stronger argument would be to say that he was a  
15 household employee under the New York Labor Law. There's an  
16 exemption --

17 THE COURT: The contention is that he was the manager,  
18 he was set up by the defendant as a manager, managing various  
19 kinds of real estate investments and, in fact, you say he did  
20 not manage at all --

21 MR. ROSE: That's right.

22 THE COURT: -- but he was, in effect, a maintenance  
23 employee?

24 MR. ROSE: Yes.

25 THE COURT: So it sets up a sharp issue of fact,

F8SPRIZC

1 whether he was exempt as a supervisory professional employee  
2 or, as the plaintiff maintains, a maintenance person.

3 To avoid risk and provide a certainty of return, and  
4 after intensive bargaining and non-inclusive agreements, both  
5 sides think the settlement is fair and adequate; is that right?

6 MR. SALINS: That's correct, your Honor. This is  
7 Mr. Salins.

8 THE COURT: I agree. So this case is settled. The  
9 attorneys having full responsibility and authority from their  
10 respective parties. They've each communicated this morning  
11 with their respective clients and received approval of the  
12 settlement.

13 After hearing the parties, I find that it is fair and  
14 reasonable and adequate.

15 All open issues are terminated, and the case is  
16 dismissed with prejudice and without costs.

17 Is there anything that needs to be done?

18 MR. SALINS: We'll be preparing a written formal  
19 settlement document for the other side, and we'll negotiate  
20 that and put it together. Then we'll file a stipulation of  
21 withdrawal -- a stipulation of dismissal with prejudice --

22 THE COURT: And without costs.

23 MR. SALINS: -- within the next week or so, without  
24 costs, correct, your Honor.

25 THE COURT: Okay. So, save for the filing of any

F8SPRIZC

1 settlement documents, this case is closed. Thanks very much.

2 MR. SALINS: Thank you, your Honor.

3 MR. ROSE: Thank you, your Honor.

4 (Pause)

5 THE COURT: This agreement constitutes the settlement.  
6 Although the parties will be drafting a settlement agreement,  
7 the settlement, by reason of the stipulation expressed on the  
8 record, and my finding is conclusive. Okay.

9 MR. SALINS: Thank you very much, your Honor.

10 MR. ROSE: Thank you.

11 THE COURT: This case is done.

12 (Adjourned)